

September 2, 2005

GLENN AMSTER
LANE POWELL SPEARS LUBERSKY LLP
1420 FIFTH AVENUE
SUITE 4100
SEATTLE WA 98101

Subject: Complaint filed against Officials of the Seattle Monorail Project –
PDC Case #05-007

Dear Mr. Amster:

The Public Disclosure Commission (PDC) staff has completed its investigation of your complaint received July 14, 2004 alleging that officials of the Seattle Monorail Project used public funds to oppose a ballot measure by preparing and prosecuting two lawsuits challenging aspects of Seattle Initiative 83, an alleged violation of RCW 42.17.130.

PDC staff reviewed your complaint in light of the following statute:

RCW 42.17.130 prohibits the use of public facilities to support or oppose a candidate or ballot proposition. Activities which constitute the normal and regular conduct of an agency are exempt from this prohibition.

WAC 390-05-273 defines “normal and regular conduct” as conduct which is lawful, i.e., specifically authorized, either expressly or by necessary implication, in an appropriate enactment, and also usual, i.e., not effected or authorized in or by some extraordinary means or manner.

You alleged that officials of the Seattle Monorail Project (SMP) authorized the use of public funds to oppose a ballot measure by preparing and prosecuting two lawsuits, filed May 28, 2004, challenging aspects of Seattle Initiative 83.

We found that:

- The Seattle Monorail Project was a party to two lawsuits filed in King County Superior Court regarding I-83. The lawsuits held that I-83’s ballot title was inaccurate, that the initiative was in conflict with the SMP’s enabling legislation and

the Growth Management Act, and that it improperly attempted to affect administrative decisions, which are not within the scope of citizen initiatives.

- RCW 35.95A.050, the enabling legislation of the Seattle Monorail Project, empowers the agency to develop public monorail transportation facilities, and authority “to exercise all other powers necessary and appropriate to carry out its responsibilities.” According to the aforementioned statute, these powers include, “without limitation, the power to sue and be sued.”
- King County, the City of Seattle, the Port of Seattle, Pierce County, Sound Transit and Whatcom County have in the past filed lawsuits to enjoin the placement of initiatives on local ballots, to invalidate state and local initiatives both before and after passage, and to clarify whether specific local ordinances were subject to the referendum process.

Because the Seattle Monorail Project’s lawsuits regarding I-83 were authorized in the agency’s enabling legislation, and were not brought about in an extraordinary means or manner, the lawsuits were part of the agency’s normal and regular conduct, and were not prohibited under RCW 42.17.130.

During the course of this investigation, PDC staff reviewed a press release issued by the Seattle Monorail Project to announce its two lawsuits, and found that the press release contained statements concerning Initiative 83, made by non-governmental parties to the lawsuits. Officials and staff of the Seattle Monorail Project will be cautioned to omit from future official publications any statements which might be construed to support or oppose a candidate or ballot measure.

After a careful review of the alleged violations and relevant facts, we have concluded our investigation and, with the concurrence of the Chair of the Public Disclosure Commission, I am dismissing your complaint against the Seattle Monorail Project.

If you have questions, please feel free to contact Phil Stutzman, Director of Compliance, at (360) 664-8853 or toll free at 1-877-601-2828.

Sincerely,

Vicki Rippie
Executive Director

Enclosure

c: Ross Macfarlane